

AUG 20 2008

MOLLY C. DWYER, CLERK
U.S. COURT OF APPEALS

NOT FOR PUBLICATION

UNITED STATES COURT OF APPEALS

FOR THE NINTH CIRCUIT

LEON EUGENE MILLER,

Petitioner - Appellee,

v.

GARY FLEMING, Monroe Correctional
Complex Superintendent,

Respondent - Appellant.

No. 07-35953

D.C. No. CV-04-01289-MJP

ORDER*

Appeal from the United States District Court
for the Western District of Washington
Marsha J. Pechman, District Judge, Presiding

Argued and Submitted August 6, 2008
Seattle, Washington

Before: PREGERSON, CANBY, and NOONAN, Circuit Judges.

Gary M. Fleming appeals the order of the district court for the Western District of Washington granting Leon Eugene Miller's petition for a writ of habeas corpus. The highest state court to review Miller's appeal of a conviction of two counts of child molestation, WASH. REV. CODE § 9A.44.083(1), did not address

* This disposition is not appropriate for publication and is not precedent except as provided by 9th Cir. R. 36-3.

Miller's federal claim. Accordingly, we review it de novo. *See Pirtle v. Morgan*, 313 F.3d 1160, 1167 (9th Cir. 2002).

The district court properly found that the admission of three hearsay statements violated rules "articulated by the Supreme Court" in *Ohio v. Roberts*, 448 U.S. 56 (1980), *Idaho v. Wright*, 497 U.S. 805 (1990), and *Lilly v. Virginia*, 527 U.S. 116 (1999).

The judgment of the district court is AFFIRMED.